COMMISSION MEETING THURSDAY, MARCH 11, 2004 MINUTES

Chair McLaughlin called the meeting to order at 1:30 p.m., at the Red Lion Hotel located in Olympia. She welcomed the attendees and introduced the members and staff present:

MEMBERS PRESENT: COMMISSIONER LIZ McLAUGHLIN, Chair;

COMMISSIONER ALAN PARKER, Vice Chair; COMMISSIONER CURTIS LUDWIG; Kennewick;

COMMISSIONER ORR; Spokane;

STAFF PRESENT: RICK DAY, Director;

ED FLEISHER, Special Assistant;

AMY BLUME, Administrator, Communications/Legal Dept.;

GREG THOMAS, Program Manager;

JERRY ACKERMAN, Assistant Attorney General;

SHIRLEY CORBETT, Executive Assistant

Service Recognition:

Director Day and **Chair McLaughlin** presented a 15-year employee service recognition award to Dawn Warren, Supervisor, Licensing Services Division.

Review of Agenda and Director's Report: Director Day announced that Special Assistant Ed Fleisher, after 28 years of service to the state and about 5 ½ years to the Commission, will be retiring effective March 31. Several congratulatory comments were made.

Director Day read into the record Mr. Fleisher's letter of resignation and then identified various other inserts that were provided after the agenda packet was distributed. Director Day noted there were no staff recommended changes to the agenda and he then highlighted Thursday and Friday's agenda. Director Day proceeded with his report on the following topics:

Adjusted Cash Flow Report – 4th Quarter 2003: **Director Day** explained this report is provided to the Commission following the quarter's end (at the end of the recording period), in this case, through December 31, for the fourth quarter of 2003. Column B is the most significant, because anyone in that column who has been out of compliance for a fourth quarter period would be in danger of a revocation process from the Commission. Currently,

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 1 of 25 one licensee is in jeopardy of a fourth quarter problem, which would mean they were under the required adjusted cash flow for that four-quarter period. Another licensee is facing a possible summary suspension, and that issue is pending review by commission agents to make sure all the reports and revenues are accurate. Director Day addressed a graph relating to Music Works Northwest, an organization that appears to have adjusted cash flow problems. The graph provides a practical demonstration of how the new 25 percent exception rule might be applied. He explained that after applying the 25 percent, which would be an automatic process under the rule (if adopted), Music Works would come into compliance for the year 2003, and subsequently, they could not request the 25 percent consideration again for another four years. The example depicts how the application works.

<u>Correspondence:</u> **Director Day** drew attention to literature from the Council on Problem Gambling announcing National Problem Gambling Awareness Week, March 8 through the 14.

<u>Legislative Updates:</u> **Director Day** addressed <u>House Bill 1227</u> – regarding Promotional Contests of Chance. The bill was introduced last session. It was included in the agenda packet primarily for informational purposes because staff thought the bill might advance, it did not.

House Bill 1667 – **Director Day** explained this bill has had discussion every year since 1999. The bill attempts to address the issue of the local authority's ability to prohibit gambling. Essentially it passed the House Committee, the House Floor, the Senate Committee, and was pending a Senate vote. At this point the bill appears to have died, unless something unusual happens. He recalled that the Commission provided position statements opposed to this Legislation, stating the commission's belief that the local officials already have the sufficient authority to address the concerns under their zoning statutes, and that the bill could actually create further legal confusion regarding the preemption, and may end up providing exclusive authority to gamble in some areas through non-conforming uses. The Commission was also concerned it might have an unintended impact of increasing the number of operations.

Director Day addressed the <u>Supplemental Budget</u>, noting a striking amendment was inserted that didn't represent good news relative to the Commission's Fund balance. He explained the Senate bill had a \$3 million dollar transfer of Gambling Revolving Funds to the General Fund and included language to the effect that the Commission couldn't increase fees to replace excess funds. The House version had a \$2.5 million transfer to the General Fund and \$500,000 to Problem Gambling, and contained language that the transfer had to come from non-tribal funds. Director Day noted the Commission has corresponded several times to alert the Budget Committees regarding the Commission's feelings about the proposed transfer. He read the letter into the record, "I am writing to request you to re-evaluate your decision to remove funds from the Gambling Commission's Revolving Fund. The complexity of and the amount of money involved in Washington Gambling has clearly increased, and along with this growth, the Commission is now facing major bookmaking cases in multiple cities, professional cheating rings in our state's casinos, financial transactions involving 30 different banks, multiple investigations of Internet gambling involving off shore casinos, and a wide

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 2 of 25 array of electronic gambling proposals. Now we are faced with a proposal included in the supplemental budget, which would transfer 50 percent of the balance in the Gambling Revolving Account to the General Fund. This is the sole funding source, which pays for the Commission's regulatory and enforcement work. To drastically reduce this resource available to the Commission as we face the significant challenge, in absence of a budget emergency, is not in the best interest of the citizens of the state of Washington. This transfer will seriously compromise the Commission's flexibility to respond to the items listed above and complicate the Commissions ability to exercise its judiciary responsibility to allocate resources to keep gambling legal and honest." Director Day affirmed that while the correspondence requested the Legislators to reconsider this transfer, the Commission did not prevail. In other correspondence the Commission verified that there were no excess funds in the Commission's Fund Balance, the funds have specific plans addressed in the agency's strategic, expenditure, and revenue plans, and that the expenditures were based on the Commission's ability to access that fund base in the future.

Director Day reported that staff anticipates additional expenses being approved in the next Legislative Session, (a potential salary increase for state employees and an increase in pension fund contributions) and predicted it could very well cause the Commission to experience expenses being above the funds available in the fund balance to pay ongoing expenses in approximately May of 2005.

Commissioner Parker raised three points with reference to this piece of legislation. He questioned whether or not this constituted a tax—when the Legislature passes a law to take funds out of this account—funds that come from the imposition of license fees, and puts them into the General Treasury without directing those funds to go to a particular purpose, it would appear that it bears all the characteristics of a tax. He believed there was a legitimate question as to whether the Legislature could do this in the way in which it has, as an amendment to a budget bill, which is distinguished from passing a new statutory authority for a tax and pursuant to that tax, directing the funding arranged. Regarding his point two; it seemed to Commissioner Parker that if the Commission was directed to transfer excess funds and there are no excess funds, the Commission could not comply with the directive. Likewise in the second part of the provision which indicates that the Commission shall not increase fees during the 2003 - 2005 biennium with the purpose of restoring the excess fund balance transferred under this section, Commissioner Parker believed this came down to a matter of interpretation. The Commission has always maintained that the monies in the fund balance are not excess funds; they are simply funds the Commission is prudently managing. essentially holding them in reserve with the expectation of being expended in fulfillment of the Commission's responsibilities.

Commissioner Parker suggested that if the Commission were to lose the argument that the Legislature can't create this new tax in the way that it was done, and lose the argument that these are not excess funds, it then places the Commission in a position of not being able to increase fees and potentially exposes the Commission to face a deficit. Commissioner Parker felt the prudent thing to do would be for the Commission to make its own interpretation that if the Commission has to raise fees for operating expenses in order to avoid operating in a

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 3 of 25 deficit, and then the Commission would not come within this provision. Commissioner Parker asked his fellow commissioners to consider whether the Commission shouldn't initiate a fee increase this fiscal year, anticipating this levy would be imposed during the next operating year. He believed it would take that long to go through the process of instituting a fee increase and being able to offset the reduction.

Chair McLaughlin commented that she found it interesting that the Legislature was raiding what they considered excess funds from the regulators of gambling—the law enforcement arm of keeping gambling honest in the state, and yet, not taxing the gambling industry. She emphasized that in the Commission's 30-years of existence there hasn't been a scandal, and she noted that gambling has changed in that 30-years—there is more of it, and different kinds of gambling.

Commissioner Orr reinforced Commissioner Parker's comment that there is no excess. He expressed frustration with the language indicating the Commission could not raise fees, and the issue surrounding no separation of tribal and non-tribal money. He advised that he didn't like this a bit that he was annoyed with the attitude of the legislative staff that write the budget. Commissioner Orr thought the Commission should reflect that in a letter—noting the Commission is not respected, and to question how they expected the Commission to do their job. Commissioner Orr reminded the audience that the Commission had already been through a recent fund transfer and, for the Legislature to take the Commission's money and to put it in their cash reserves was another slap in the face. Director Day inquired whether the Commission wanted to give staff direction to follow through with correspondence to the Governor requesting he consider vetoing portions of the legislation. Chair McLaughlin and Commissioner Orr concurred.

Commissioner Parker asked Attorney General Ackerman to comment on the points of legal interpretation. Mr. Ackerman responded that it was uncertain how the issues would be resolved in court, if that is where this ended up. He explained that one of the things that makes this a difficult question to address is that for the last couple of years the removal of funds from the Commission's budget or from the Gambling Revolving Fund has always been couched in terms of an excess funds balance. However, no one has ever identified what an excess fund balance was. Mr. Ackerman affirmed that in observing the Commission's budget presentations, he hasn't seen anything to indicate that this Commission operates at an excess, it seems to operate within generally accepted accounting principals, in terms of the funds and how the funds are used, and the funds the Commission seeks to acquire through fees. He commented that an interesting contrast is that the budget makers keep talking in terms of excess funds, and yet enabling statute, Chapter 9.46, directs the Commission to set such fees and to raise such funds as are necessary for the operation of the agency. The Commission does not have the authority or the responsibility for raising money for purposes of the General Fund. Fee increases historically have been matched very closely to the needs of the agency. Mr. Ackerman acknowledged that one of the frustrating parts of this particular Legislation is that it is intended to take the excess fund balance, which has never been identified, and creates the issue that Commissioner Parker addressed—the Commission is directed (via 9.46) to raise money to cover their operating expenses and then that money is

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 4 of 25 taken and put into the General Fund. The question is whether the licensing fees are being converted into a tax—and that's something that a court would have to resolve, if it had to be resolved.

Mr. Ackerman emphasized that he was not suggesting litigation. The Commission exists as a creature of statute, and the directions to the Commission with regard to licensing and fees and what to do with the revenue came from the Legislature. The Legislature could change their directions it in the next session—they could take the Commission from being a non-appropriated agency to an appropriated agency. He believed that realistically, if there is a change to be made from the status quo, it probably would be a change that would have to come from a political decision rather than a judicial decision, because in the end, the Legislature and the Governor would have the last word.

Chair McLaughlin affirmed she was annoyed and questioned how the Legislature could have taken \$2.4 million two years ago and then suggest a \$3 million transfer this time and expect the Commission to exist. She questioned what the Commission was doing wrong—whether the Commission was collecting too much money. She noted that after the \$2.4 transfer, the Commission gave up five management positions and 15 FTEs. Commissioner McLaughlin suggested the Commission might have to do the same thing unless something changed. She understood that the Legislature could restore the money next year if they saw fit.

Commissioner Orr responded that if the Legislature wanted to general fund this agency, they may do so. However, they have asked the Commission to do a job, and he believed the Commission was doing a fine job, and that he found it to be very frustrating to be compromised and to be put in this position. Commissioner Orr reinforced the need to send a letter suggesting a veto and to articulate the potential of litigation

Commissioner Parker inquired if there was a basis for the Commission as an independent regulatory entity for the state to file a lawsuit in its own name—a declaratory judgment, asking the court to interpret these issues. Mr. Ackerman believed the answer was yes; however, he cautioned the Commission that he would wish to do some research first in order to provide a more positive answer. Hypothetically, the Commission could bring a lawsuit against another state agency or another branch of government—the Commission doesn't have the unitary executive issues that exist in the Federal system. Mr. Ackerman suggested that if the Commission wanted to contemplate litigation of this type, the subject would be appropriate for further discussion in an executive session. Commissioner Parker responded that the Commission is charged with a responsibility, and if the Legislature passes a law that makes the Commission unable to meet its responsibilities to the public, then the Commission would have a responsibility to take every action to counter that action.

Director Day provided some clarification to a question posed by Commissioner Parker regarding fees increases and affirmed the Commission elected not to implement a fee increase for this fiscal year, and noted that any fee increases enacted would be limited by the I-601 limits.

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 5 of 25 Commissioner Ludwig made the motion seconded by Commissioner Orr directing staff to draft the veto request correspondence for Chair McLaughlin's signature as quickly as possible. *Vote taken; the motion passed unanimously*.

Director Day reported on Second Substitute House Bill 2776 - the Problem Gambling bill which started out as a bill to establish and fund a problem gambling treatment and education system, essentially with a license fee or a license fee surcharge attached. Through the process, it was modified and directed a task force to identify a permanent funding source for problem gambling treatment and education. At the same time it requested seed funding for problem gambling treatment while the task force was working on the permanent funding source. The amount requested was \$500,000 from the Commission and \$500,000 from the Lottery. The bill is technically still alive.

Chair McLaughlin questioned if this bill passed, if it meant that only the Bingo and commercial operators would be paying for the \$500,000 and not tribal funds. Mr. Ackerman believed the most recent draft of the legislation, and he referred to Section 903 of Part 9, now directed that any transfer from the Gambling Revolving Fund to the General Fund was to come from the excess non-tribal balance of the fund. He believed the two categories that the Legislature contemplated were tribal gambling and non-tribal gambling, which in itself was an interesting concept since the Commission does not segregate funds into those categories. Director Day responded that it appeared that the Gambling Revolving money was separate from the second sentence, and he noted that the language indicates that during the 2003 - 2005 fiscal biennium, the Legislature may transfer from the Gambling Revolving Fund to the State General Fund, such amounts as reflect the excess non-tribal fund balance of the fund. He didn't believe that the non-tribal reference was connected to the Problem Gambling Dollars.

Special Assistant Ed Fleisher indicated that it was connected in the appropriations bill. He affirmed this has been a political hot potato in the Legislature over the last week—and he indicated they were trying to turn an accounting question into a political question. Mr. Fleisher affirmed the Commission doesn't keep separate accounts of tribal and non-tribal funds. From a true accounting view, the Commission actually does the work for the tribes before they are even billed. He affirmed the tribes may prepay; however, the payments given by the tribe in any given year are based on the amount of work the Commission provided in the previous year. If the amount prepaid exceeds the Commission billing for the current year, the tribe receives a credit, or it is effectively returned to the tribe the next year, per Appendix X of the compact.

Commissioner Parker questioned if it's interpreted that half of the \$500,000 for problem gambling, or some portion of that, would come from funds tribal licensees are paying and how that aligned with provisions contained in the compacts defining what the fee level was supposed to be, and for which purposes. He believed this would be over and above what is addressed in the compact—unilaterally adding some additional charge to the tribal casino license in effect, and would be inconsistent with the idea that the compact is the basis for a

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 6 of 25 mutual agreement for the compacting tribe and the state as to what the arrangement would be. **Mr. Ackerman** responded that he thought it all came back to the whole notion of an excess fund balance that doesn't exist. The money is received from the tribes given the coregulation activities performed at the tribal facilities. In essence, the Commission is only recovering what it is lawfully allowed to recover and there is no excess fund to transfer to the problem gambling account. If the language is to be read in the way that Director Day suggested, the \$500,000 going to the problem gambling account could include tribal monies, there is the potential for an issue. Mr. Ackerman reiterated there is no excess fund balance, and secondly, the Commission doesn't segregate funds. Presumably, one way to analyze this would be to say that the \$500,000 did come, and must come from non-tribal funds in order to honor the compacts and the requirements that became the regulatory act.

With no further comments, **Director Day** proceeded to <u>Senate Bill 6481</u> which provides for more frequent simulcast opportunities for the satellite locations around the state. The bill also establishes a new format for account wagering that essentially allows a person to establish a depository account at a "hub" in order to call in and place wagers on various races occurring around the United States. This bill allows that to be done either via the telephone or via the internet. Director Day noted this particular kind of wagering is going on in other states; however, it would be the first Internet type of wagering allowed in our state—it would be restricted to the satellite locations, and could then become a topic of negotiation in all of the tribal compacts. He affirmed this bill did require a 60 percent vote in each house.

Commissioner Parker inquired if this could raise regulatory issues for the Commission even though we are not charged with regulating horse racing. Mr. Ackerman responded that to the best of his knowledge this bill has not been signed. He acknowledged that this legislation could potentially impact the Commission depending upon possible judicial interpretations, and the effect of this language in gambling could extend beyond horse racing. However, any judicial interpretation would be one of the laws in its final form. Mr. Ackerman noted the Governor does have the ability to veto less than the entire bill—and the ability to veto the entire bill. If the bill is signed in its current form, it could potentially create issues for the Commission, depending upon what a court chose to do if presented with a case that said this bill opened gambling up to other than horse racing. **Director Day** noted the bill does carry a sunset provision of October 1, 2007, for the account wagering. Chair McLaughlin questioned if the work currently underway on the national internet betting would be affected in any way as a result of this legislation. Mr. Ackerman responded that it could; he noted that one of the defenses to that litigation has been that Internet gambling is blanketly prohibited in the state of Washington, and that we are not discriminating against Antigua, Barbuda, and the other countries involved in that litigation.

Director Day addressed the <u>Administrative Case Status Report</u>, the <u>Seizure Case Updates</u>, <u>and News Articles</u> inserts. He drew attention to the news article regarding Tim Eyman's new initiative. He noted the article seems to imply that the initiative would carry with it the Gambling Commission's regulation, and it appears that the operation of the machines proposed would take place at Gambling Commission licensed locations. However, the actual regulation of the machines themselves would be via the Lottery.

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2. Qualification Review:

Seattle Jr. Hockey, Mountlake Terrace:

Special Agent Pat McGreer reported the association was formed in 1974 and became licensed by the Commission in 1975. Seattle Junior Hockey provides amateur hockey and other youth related activities for children ages 5 through 19. They currently hold licenses for Bingo, a Class U license for pull-tabs, a Class E license for raffles, and a Class A commercial amusement game license. According to the data presented on the Commission's website, Seattle Junior Hockey has been the number one of the top 40 Bingo operators for five of the last six years. Seattle Junior Hockey has made significant progress towards its stated purpose and is qualified as a non-profit organization conducting Bingo. Ms. McGreer reported that staff recommends that Seattle Junior Hockey Association be certified to conduct gambling activities within the state of Washington as a non-profit organization.

Ric Newgard, Executive Director of Seattle Junior Hockey, introduced Randy Granger, the Gaming Manager.

<u>Commissioner Orr</u> made a motion seconded by <u>Commissioner Ludwig</u> authorizing Seattle <u>Junior Hockey Association to be licensed as an athletic organization authorized to conduct gambling activities in the state of Washington</u>. <u>Vote taken: the motion passed with four aye votes</u>.

3. House-Banked Card Room Reviews:

Highway 9 Casino, Lake Stevens:

Licensing Services Supervisor Collene Kiefer reported that One Eyed Jack's Business Development, LLC, is doing business as Highway 9 Casino in Lake Stevens. One Eyed Jack's Business Development, LLC, has applied for a license to operate fifteen tables of house-banked card games. The applicant was formed as a limited liability company in 2002. The LLC headquarters is located in Tukwila. One Eyed Jack's Business Development LLC, consists of Allison Williams with 20.4 percent of membership shares, Thomas Posephney with 20.4 percent of membership shares, Francis Suarez with 19 percent membership shares, Terrence Ding with 13.5 percent membership shares, Lucy Nela with 13.5 percent membership shares, James Walsh with 8.10 percent membership shares, and Tiffany Kalfur with 4.10 percent of the membership shares. Randy Williams is the managing member with no shares. The applicant and its members hold no other house-banked licenses at this time.

Special Agents from the Financial Investigations Unit conducted a criminal and personal history background investigation on all substantial interest holders and initiated and completed a financial investigation on both the LLC and the personal member finances. No disqualifying information was found. Special Agents completed an onsite pre-operational review and evaluation. The applicant was found to be in compliance with the rules of the Commission. Based on the licensing investigation and the on-site review and evaluation, staff recommends One Eyed Jack's Business Development, LLC, doing business as Highway 9 Casino, be licensed as a house-banked public card room and be authorized to operate up to 15 tables with up to \$100 in wagering limits.

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 8 of 25 **Tiffany Kalfur,** Operations Manager, introduced herself and Randy Williams, and responded to a few operational questions.

Commissioner Orr made a motion seconded by Commissioner Parker to license One Eyed Jack's Business Development, LLC, d/b/a/ Highway 9 Casino as a house-banked card room authorized to operate up to 15 tables with a maximum bet limit of \$100. Vote taken; the motion passed with four aye votes.

Players & Spectators, Spokane Valley:

Licensing Services Supervisor Collene Kiefer explained that J & J Casino Investments, LLC, applied for a license to operate up to 15 tables of house-banked card games. The applicant was formed as a limited company in September of 2003. The LLC headquarters is located in Spokane. J & J Casino, LLC, membership consists of: Jack Duncan with 51 percent membership shares and Jerry Heggestad with 49 percent membership shares. The applicant and its members hold no other house-banked licenses at this time. Special Agents conducted a criminal and personal background history on all substantial interest holders and initiated and completed a financial investigation on both the limited liability company and individual LLC member's finances, which included their spouses. No disqualifying information was found.

Special Agents also completed an onsite pre-operational review and evaluation in accordance with the rules of the Commission. The applicant was found to be in compliance. Based on the results of the licensing investigation and the preoperational review and evaluation, staff recommends that Players & Spectators be licensed as a house-banked public card room authorized to operate up to 15 card game tables.

Jerry Heggestad introduced himself and responded to some operational questions.

Commissioner Orr made a motion seconded by Commissioner Ludwig to license J & J Investments, LLC, d/b/a/ Players & Spectators as a house-banked card room authorized to operate up to fifteen tables with a maximum bet limit of \$100. Vote taken; the motion passed with four aye votes.

House-Banked Card Room Status Report:

Ms. Kiefer reported that as of today, there are a total of 86 house-banked card rooms—81 of those are licensed and operating, five are licensed but not operating, and there are nine house-banked applications pending.

4. New Licenses, Changes, and Tribal Certifications:

Commissioner Ludwig made a motion seconded by Commissioner Orr to approve the new licenses, changes, and Class III tribal certifications as listed on pages one through 25 on the approval list. *Vote taken; the motion passed with four aye votes*.

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 9 of 25 Chair McLaughlin called for a recess at 2:45 p.m. and reconvened the meeting at 3:04 p.m.

5. Petitions for Review:

Paulina Tran, Card Room Employee – Cadillac Ranch Casino, Longview: Chair McLaughlin announced that Commissioner Ludwig would act as the Hearing Officer.

Sara Olson, Assistant Attorney General and **Petitioner Paulina Tran** presented their cases. A transcript of the hearing is on file. At the conclusion, **Commissioner Ludwig** called for an executive session to deliberate the case. The Commission recessed at 3:35 p.m. and reconvened at 3:45 p.m.

<u>Commissioner Orr</u> made a motion seconded by <u>Commissioner Parker</u> to suspend Ms. <u>Tran's license for 30 days from the date of the Order signature</u>. <u>Vote taken; the motion passed unanimously</u>.

Commissioner Ludwig noted that the current license is scheduled to expire on May 15, 2004, and the Petitioner would be eligible to apply for another job at the conclusion of the 30 day suspension. He cautioned that when the Petitioner submits her renewal license application, the agency may take a good look at this and the Commission and/or the potential employer may want the Petitioner to get additional training. Commissioner Ludwig explained the Commission was suspending the license for 30 days based on what the Administrative Law Judge ruled. He affirmed the Commission's belief that the Petitioner was not guilty of cheating and that there was no criminal intent.

Maple Leaf Tavern/J & R Tavern, Bremerton/Silverdale:

Sara Olson, Assistant Attorney General and **Attorney James Sells** representing the **Petitioner, Maple Leaf Tavern/J & R Tavern** presented their cases. A transcript of the hearing is on file. At the conclusion, **Commissioner Ludwig** called for an executive session to deliberate the case. The Commission recessed at 4:20 p.m. and reconvened at 4:25 p.m.

<u>Commissioner Parker made a motion seconded by Commissioner Orr to uphold the Findings and Conclusions and Initial Order of the Administrative Law Judge in the matter of J & R Tavern and Maple Leaf Tavern. Vote taken; the motion passed unanimously.</u>

Commissioner Parker explained that the record didn't provide basis for the Commission to take any other action—even taking into account Counsel's representations on behalf of the client. He emphasized that having a gambling license carries with it a responsibility, and if a licensee ignores those responsibilities, they simply shouldn't have the privilege of being able to hold a license.

Commissioner Ludwig concluded the hearings and stated a copy of the orders would be mailed to the Petitioners as soon as they were prepared and signed.

6. Other Business/General Discussion/Comments from the Public:

Chair McLaughlin called for public comments.

Bruce Meyer, Director of Operations for Michaels Development commented on the Paulina Tran case. He reported that what was not mentioned was that the management and surveillance personnel were working hand and hand with the agent in that investigation. The discrepancies were discovered and management called for the tapes, and subsequently called the Commission. He affirmed that Ms. Tran was being watched very closely by management. **Commissioner Ludwig** responded that the Commission didn't have the benefit of Mr. Meyer's information before making their ruling, it might have been different; however, the Commissioners weren't supposed to have that information because it wasn't part of the record.

Mr. Meyer also complimented agency staff for their newsletters, stating they were an excellent tool and very informative for card room operators and employees.

Steve Michaels, Owner, Chips Casino and Palace, commented that the frustration the Commission experiences with regard to the fund transfer and the perception of the excess funds, is the same frustration card room owners go through because of the financial statistical information the Commission publishes. The reports do not reflect the full big picture; every one looks at the numbers and believes the industry is making lots of money. He suggested that if they saw the full picture, people would see a different reality.

Chair McLaughlin called for a recess at 4:20 p.m. At 4:30 p.m., she called the meeting back to order and announced the Commission would recess for an executive session to discuss potential litigation. Chair McLaughlin reconvened the meeting at 5:00 p.m. and announced that Friday's meeting would commence at 9:30 a.m. With no further business she adjourned the meeting.

Minutes submitted by:

Shirley Corbett Executive Assistant

COMMISSION MEETING FRIDAY, MARCH 12, 2004 MINUTES

Chair McLaughlin called the meeting to order at 9:30 a.m., at the Red Lion Hotel located in Olympia.

MEMBERS PRESENT: COMMISSIONER LIZ McLAUGHLIN, Chair;

COMMISSIONER CURTIS LUDWIG; Kennewick;

COMMISSIONER ORR, Spokane; COMMISSIONER ALAN, Olympia; SENATOR SHIRLEY WINSLEY;

STAFF PRESENT: RICK DAY, Director;

ED FLEISHER, Special Assistant;

AMY BLUME, Administrator, Communications/Legal Dept.;

GREG THOMAS, Program Manager;

JERRY ACKERMAN, Assistant Attorney General;

SHIRLEY CORBETT, Executive Assistant

8. Approval of Minutes: Regular Meeting of February 12 and 13, 2004 – Olympia.

Commissioner Orr made a motion seconded by Commissioner Ludwig to approve the meeting minutes of the regular meeting of February 12 and 13, 2004, as presented. *Vote taken; the motion passed with four votes.*

Chair McLaughlin noted that Ex Officio Member, Senator Winsley was present and asked the Senator to provide a briefing surrounding the decision regarding the supplemental budget. Senator Winsley responded that the chairs of the House and Senate Committee (those in charge of the budget) have the most power to make the decisions and the rest of the legislative body agree or not. She affirmed the Legislature is always looking for money, especially in an environment where they can't raise taxes. Chair McLaughlin acknowledged the response and redirected a question that it was the Commission's understanding that the \$3 million dollars the Legislature thought was excess in the Commission's budget was now going into the state excess fund. Senator Winsley could not respond to the specifics of that question and she emphasized that if the economy didn't pick up, if the Legislature couldn't

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 12 of 25 raise taxes, and if the state continued to experience the threat of initiatives, there would be impacts. She affirmed there have been a lot of impacts over the last two or three years—she noted that citizens expect the Legislature to pay for programs which cost over a billion dollars a biennium, and then on the other hand, they take that same amount of money away—she affirmed it's a real bookkeeping problem. **Chair McLaughlin** asked if there was anything specific the Commission could do to ensure funds aren't transferred from the Commission's budget in the future. **Senator Winsley** responded that she thought a lot of Legislators didn't really understand the role of and the function of the Gambling Commission. She reminded the Commission that the Legislature is made up of a lot of different personalities from people who come from all over the state and have different agendas. Some don't like gambling at all under any circumstances, others think that gambling to a certain extent is fine, but, they want it controlled. Senator Winsley cautioned the Commission from having "any change lying around because somebody is going to take it ... sometimes if you have change lying around it works as a detriment."

To bring Senator Winsley up do date, **Commissioner Parker** pointed out that the Commissioners have asked Director Day to prepare a letter to the Governor requesting that he veto that provision of the budget bill and to prepare a report that would identify the impact of that reduction on the Commission's budget—in terms of the Commission's ability to meet their responsibilities as a Commission in the face of increased gambling throughout the state. Commissioner Parker addressed the discussion about the fact that the Commission has never had excess funds, that certain funds were held in reserve, and that the Commission doesn't collect funds that are excess—essentially the Commission sets the fee schedule at a level needed to perform their regulatory function—it is a flat budget. He commented that hopefully the Commission will be able to demonstrate to the Governor that it's ill advised to take that reduction against the Commission.

Senator Winsley acknowledged the state's \$300 million dollar reserve, and that the Governor has the prerogative to veto any bill, or portions of a bill. She urged the commissioners to meet with Governor Locke.

Commissioner Orr asked Senator Winsley, should the conversation come up, to articulate the Commission's feelings—this would not be general fund money, and to emphasize that the Commission is expected to protect the citizens from gambling scandals, and yet, the Commission's budget is tampered with and the agency doesn't even get invited to go to the table to defend themselves—he stressed this was very frustrating.

9. Staff Presentations:

Public Policy Research for Charitable/Nonprofit Gambling Report:

Amy Blume, Administrator, Communications and Legal Division, provided an update, noting that at the November meeting the commissioners voted to have staff issue a Request for Proposal (RFP) to have a study on Charitable Non-Profit Gambling. The Commission advertised in December, and had ten requests for the RFP, and received one submittal. The respondee was Ms. Sally Perkins who has owned a business in Tacoma since 1996. The

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 13 of 25 review committee was very impressed with her credentials and with her past experience—she had outstanding references. Along with her consulting business, Ms. Perkins had state government experience, and she also worked at a non-profit organization for 12 years. Ms. Perkins was very interested in being able to meet the commissioners at this meeting, unfortunately, she was out of the state. Staff is requesting approval to enter into a contract with Ms. Perkins—up to \$25,000. Ms. Blume anticipated that Ms. Perkins would come back to the Commission, do the research in the next several months, and provide a report in August. Ms. Blume advised the bid actually came in at approximately \$18,000—however, staff believed it would be a good idea to request authority to enter into a contract at a maximum of \$25,000 to cover some areas of expanded review areas as discussed in previous meetings.

<u>Commissioner Ludwig</u> made a motion seconded by <u>Commissioner Orr</u> to approve entering into a contract with Ms. Perkins for up to \$25,000. *Vote taken; the motion passed unanimously*.

Senator Winsley reported that she was familiar with Ms. Perkins and her work, and complimented the Commission on selecting a good contractor.

Tax Report:

Amy Blume, Administrator, Communications and Legal Division, reported that at the September meeting the Commissioners voted to have staff facilitate the tax report rather than submitting an RFP for the report. Ms. Blume introduced staff member Kathy Mills as the key person who gathered and summarized the information. Chair McLaughlin expressed her sincere compliments to Ms. Mills for the excellent report and advised that she appreciated the format. Ms. Blume credited the following staff for their work on the report: Cameron Baker, Ken Dekay, Melinda Froud, and Susan Arland.

Ms. Blume pointed out this report does not focus on Tribal Gambling; however, she noted the records indicate that the net receipts for tribal gambling are now more than all the other activities for gambling combined, which includes horse racing and the lottery. The report focuses on the things the Commission regulates on the non-tribal side. Originally, a committee was made up of staff and representatives from the industry—a "Christmas list" of things to look at was developed. That list was presented to the commissioners for additional input and final approval, and the items approved were the subjects reviewed.

Ms. Blume proceeded to highlight the overall project. Staff contacted eight other states—and looked at states that were similar to Washington, either in population or in the activities they allow. She cautioned that looking at someone similar was impossible because there isn't another similar state. Staff also worked with the Association of Washington Cities—they were very helpful in providing data. They conducted a survey of the cities in 2002, and some of that data was included in the report. Staff also used the data the Commission had on record—the Commission collects reports once a quarter from most of the licensees, and staff also used information obtained through staff's work with local jurisdictions.

Ms. Blume explained that the staff tried to look at significant events that were related to gambling taxes and also to the growth of gambling. A Governor's Ad Hock Committee on Gambling was established to look at what the public had intended when they passed Senate Joint Resolution Number 5 (SRJ 5)—the constitutional amendment to allow gambling. In reviewing the legislative history, staff learned that taxing at the local level was a very deliberate decision. The Committee assigned a low priority to legalized gambling activities that could provide alternative revenues for the state, and it designated the revenue question as "the last of its priorities" for three reasons. One was based on the projected gambling revenues at the time, they thought there would be a very limited return to the state. Another reason addressed the state's involvement in the gambling promotion, and not feeling that was the best way to go—this was in the early 70's, which was about a decade before we had state lotteries. The third reason was that the committee wasn't really sure that the revenue was a significant factor for the citizens when they were voting on SRJ 5.

Staff also learned, as stated in the law itself that the intent of the gambling taxes was for enforcement. Many jurisdictions have their own police agencies that do a lot of the enforcement, however, **Ms. Blume** noted that one thing that came out in a court decision, was the belief that having a police presence was part of deterring crime— even crime related to gambling. Because of that, the court found that gambling taxes didn't have to be traced exactly to gambling enforcement, it must be the first use, but after that, it may go into the city or county budget.

Ms. Blume reported that Washington has a population of about 6.1 million people, and the staff looked at states with similar population: Arizona, Colorado, Minnesota, and while Oregon's population is quite a bit less than Washington, they were considered because they are a neighbor state. New Jersey and Nevada were purposefully left out because the extent of their gambling is so much greater than Washington. However, staff did contact them to address their betting limits.

Staff looked at whether the charities pay taxes, and overall in other states, charities do pay a gambling tax. **Ms. Blume** reiterated that no other state has the exact same activities Washington has —we are the only state that has commercial house-banked card rooms. North Dakota has house-banked card rooms, they are in taverns and they are operated by charities—which is vastly different. Colorado and Michigan have house-banked games, but, they are within casinos. Washington is the only state of the eight staff compared, and the only state in the country that has commercial pull-tabs. Ms. Blume affirmed they can be found in states with pull-tabs in a commercial location (a tavern or a restaurant), but, they are operated for the benefit of a charity, and not where 100 percent of what is being made goes back to a business—which is different. Minnesota is the only state that has higher gross receipts than Washington for pull-tab, and Michigan has higher gross receipts for Bingo.

Staff drew the following conclusions about taxes: Washington is the only state of the states contacted without a state gambling tax. Some states have a local gambling tax like Washington, and the uses for the taxes very. Taxes from five of the eight states go to fund the regulatory agency, and the other money goes to the general fund, typically for education.

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 15 of 25 In Washington, licensing fees totally fund the Commission, rather than taxes. In Colorado more than 25 percent of the taxes go to the State Historical Society, and there are a lot of different uses, sometimes the amount is very small, sometimes it's larger. **Commissioner Parker** asked if staff could identify the states that have taxes where the tax revenue is targeted for a particular purpose or whether they generally go into the treasury—if states tax, are those taxes targeted for gambling, for education, or for something particular, such as our Lottery, where the funds are usually dedicated for a particular purpose. Ms. Blume responded that in five of the eight states, part of the taxes fund the gambling regulation (South Dakota, Colorado, Michigan, Minnesota and Oregon).

Commissioner Parker addressed the statistics for Colorado; noting the gross gambling receipts were \$707.2 million, and the total tax revenue to the state was \$97.4 million. The report indicated that 49.8 percent goes to the general fund, and 28 percent goes to the State Historical Society—which means twelve percent goes to two particular counties.

Senator Winsley asked if Minnesota had the highest gross receipts for pull-tabs because there were more facilities that have pull-tabs, such as the American Legion—she also noted they have a lot of competition from tribal facilities. **Ms. Blume** couldn't respond point specifically about the pull-tab facilities in Minnesota—she affirmed this report answers a lot of questions, but it also begs a lot more questions—and she affirmed that according to the NIGC, Minnesota has 18 tribes and 17 casinos that are operating.

Senator Winsley addressed the statistic that 75 cities in our state have gambling but do not tax, and inquired whether that included pull-tabs. **Ms. Blume** responded that the statistic means they don't tax that type of gambling. Senator Winsley thought that would be good news for Legislators to realize they can do something to help themselves.

Ms. Blume continued with her report, and she noted that the staff also looked at betting limits and discovered that most states have limits, and that most are set by state statute. There were a few states that don't have limits, which included Nevada and New Jersey. Staff also found that they like the control of not having limits because it allows the house to set their own limits. Ms. Blume noted that usually the betting limits for tribal and commercial businesses are different—and if there is a difference, the tribal limits are usually higher.

Ms. Blume reported that the third topic staff looked at was how the market share has changed over time. This was something the members of the industry were very interested in. Overall, the total taxes being paid increased, but who was paying them and the market share changed. The commercial operator (non-tribal) market share has increased steadily over time from five percent in 1985 to 86 percent in 2003. Staff looked at 1975—because that was at the beginning of the industry, then staff looked at 1985—because the Commission had a little more experience and because the Lottery was introduced in 1982, and staff had a chance to look at how the Lottery impacted the market share (the 80's were also the peak years for the charities). Staff reviewed 1994 because three tribal casinos were introduced, which was prehouse-banking, and 2003 was the most recent year. Ms. Blume reported that as the commercial operator share increased, there has been a corresponding decrease for the non-

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 16 of 25 profit organizations. In 1985, non-profits had 45 percent of the market shares—for net receipts, they were paying 40 percent of the gambling taxes. In the last year, they were down to 14 percent of the market share and paying 7 percent of the taxes.

Chair McLaughlin readdressed the 75 cities that do not levy a tax on gambling and asked if staff looked at whether they paid a B&O tax or sales tax. **Ms. Blume** affirmed they would pay state B&O but they didn't have a separate city B&O. She thought it would be unusual to find a city that was not collecting a gambling tax, that was collecting it's own B&O tax.

Ms. Blume displayed a slide on the commercial pull-tabs changes reflecting when the market share and the gambling taxes were close in line, and when they were more spread out. She highlighted that the commercial card rooms had six percent of the market in 1994 and paid taxes at eight percent, and then in 2003, they had 50 percent of the market share and paid 61 percent of the gambling taxes in the state.

Staff also considered some local jurisdiction issues such as the ranges of tax rates from various cities. Directing attention to page 47 of the report, **Ms. Blume** reported that the shading indicated cities that are taxing at the maximum rate for the particular activity, and page 50 provided the information for the counties. Staff looked at King County, Pierce County, Snohomish County, and Spokane. She noted that Spokane is an area where there are different tax rates for business located within city limits versus being in the county. Pages 48 through 49 listed the 75 jurisdictions that have gambling, but don't tax.

Staff looked at the B&O tax issue. While there is not a state gambling tax, as mentioned, businesses do pay B&O taxes. The charities and the commercial establishments would have paid about \$6.4 million dollars in calendar year 2002. There are 32 cities that levy their own B&O tax for a total of approximately \$165,000. Businesses pay a sales tax on supplies, Bingo cards, pull-tabs, and etc., and staff estimated they paid about \$3.2 million dollars to the state in sales tax. Commercial card rooms and pull-tab operators pay sales tax on their food, which equates to approximately \$55 million dollars (this does not include food sales).

Ms. Blume noted that when staff and the committee looked at city revenues, the question was raised as to how much the gambling taxes were contributing towards those budgets. The statistics were covered in pages 34 to 37 of the report, and the average was about 1.2 percent of the city's revenues. For the year staff looked at, approximately \$35 million dollars in gambling taxes was paid to cities and the revenues for the cities at that point would have been about \$2.9 billion dollars. She noted there were six cities where the gambling taxes made up more than five percent of the revenue: Lakewood, Kenmore, Shoreline, Clarkston, Millwood and LaCenter. Questions were raised concerning the city of LaCenter, and Mr. George Teeny addressed the Commission in response.

George Teeny advised that he owned the Last Frontier and New Phoenix card rooms located in LaCenter. He affirmed the fire department approached him and indicated they were short of money and couldn't build their new facility, and asked for help. Mr. Teeney reported that along with other card rooms in the state owned by the Michaels' Corporation, they were able

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 17 of 25 to donate well over \$20,000 towards the project. He addressed other renovations provided through their contributions.

Commissioner Parker praised staff's report. He noted the report answered two questions—one relating to the different rates, and then the aggregate and separate tax revenues. He appreciated that the information was detailed regarding total gambling related taxes by county, and a net receipts, and a net tax figure. Commissioner Parker suggested the net tax figure in this case was approximately \$44,132,268 which still raises a question in terms of what that represents. He addressed the Eyman Initiative, where Mr. Eyman is projecting \$400 million in tax revenues that would essentially replace property tax revenues. Commissioner Parker verified that currently, the \$44 million dollar tax revenue goes almost entirely to the local jurisdiction. Ms. Blume affirmed. Commissioner Parker didn't think there was much room for additional tax revenues from these base receipts. Chair McLaughlin asked what Oregon's tax structure achieved. Ms. Blume referenced page 68, and responded approximately \$301 million dollars. She noted they prefer not to call it a tax. Senator Winsley believed Oregon operated under a 65 state/35 operator split on the machines, and reported that the state owns their machines and that the employees are all state employees.

Director Day inquired if the Commission would like staff to present a brief analysis of the Eyman proposal, and he noted the Gaming Revenue Task Force also produced some information as far as what machines did or did not produce in Washington. He affirmed there were formulas, it was just a matter of applying them to the facts in the proposal. **Chair McLaughlin** affirmed. **Commissioner Ludwig** concurred and he believed the Legislative Committee staff would probably already have that information available. Director Day indicated that if his understanding was correct, most of what is in the Eyman proposal has some relationship to the information in the Gambling Revenue Task Force and between that report and the information from the Legislative Committee staff, there would be sufficient information for staff to condense and develop into a report.

Commissioner Parker noted there hadn't been a specific request to make a comparison with tribal gambling; however, he thought there might be some points that would be interesting. Under the compacts, tribes agree to contribute 2 percent and one percent—the 1 percent is intended to be dedicated to address impact costs to local jurisdictions, and the 1 percent is a charitable contribution. He noted that the Tribes are also paying out of their revenues for their own local government functions—although we don't know what that rate is, because there are no reported figures. Commissioner Parker noted that it does make one wonder whether there is a comparable rate that is being paid out. Essentially they are taxing themselves since it's a tribal operated gaming operation, but they are dedicating a percentage of that revenue, in some cases a significant percent, to the locals and to their own governmental operations. Director Day responded that compact compliance relative to the 2 percent and 1 percent contributions is an item included in staff's preliminary discussions with the tribes, and staff is in the process of preparing a report to the Commission on those totals which could be presented in the early fall of this year. Commissioner Parker affirmed, and noted that because the Commission is not an agency with the responsibility for collecting

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 18 of 25 taxes or even for studying taxes, it is a question we've raised because it's part of the overall context of the field in which we have a responsibility. **Chair McLaughlin** called for public comments.

Kris Keeley, Iron Horse Casino in Auburn, addressed page 55 of the report, drawing attention to the fact that out of the \$246 million net receipts from card rooms, the card rooms were paying somewhere around \$29 million dollars to the local jurisdictions—which didn't leave a lot of room to tax in any other capacity. Although there are 75 jurisdictions not taxing it at all, when a jurisdiction notices that there are gambling receipts in their area, they quickly catch on that they can tax it. Cities dial in to what the card room can bear, and then they bear down. Mr. Keeley affirmed this report showed a lot of information, but, some of it is related to economies of scale. In our state, gambling has been an enhancement to food and beverage business—it spreads jobs all over the state and spreads revenue all over the state. Referring to page 55, Mr. Keeley emphasized that the card rooms where being taxed at a maximum. In Auburn, he advised he would make about \$400,000 net income, while being responsible for about \$8 million dollars in total revenue. The local jurisdiction, which has almost near no regulatory function, would benefit approximately \$900,000 because of that business—it's a 2 to 1 split with the city, and then the rest of the money just flows into the businesses at large. Commissioner Parker verified Mr. Keeley has a return on assets. Mr. Keeley affirmed, not quite a 10 percent return. Some discussion was initiated regarding smaller cities and towns (border towns for example) that don't tax on the punchboard and pull-tab operations, and it was suggested that while those operations are a big asset for the taverns and restaurants the officials may be afraid the businesses would close if taxed—and it was further suggested that they make the revenue up because they are destination site or a local tourist attraction.

10. <u>Default Proceedings:</u>

Paula Oldham, Class III Employee - Northern Lights Casino, Anacortes:

Arlene Dennistoun, Staff Attorney, reported that staff is requesting the Commission revoke Ms. Oldham's Class III Certification. Ms. Oldham had been working at the Swinomish Northern Lights Casino. Ms. Oldham allegedly entered false information into the casinos player tracking system so that additional points and or credits would accrue in her husband's account. It's also alleged that Ms. Oldham also forged another employees name on casino documents. Ms. Oldham was suspended by the Swinomish Tribe, and they had been awaiting the Commission's investigation before taking further action. Staff sent the charges by U.S. First Class mail, no response was received—the charges were not returned to staff undeliverable. WAC rule addresses that service is complete upon mailing U.S. mail. WAC rule also requires that mail be served to the last known address on record provided by a licensee. Service was deemed complete. The cover letter clearly explained that if there is no response to the charges, the Commission would issue a Default Order revoking the licensee's certification. Staff called Ms. Oldham but the number provided was disconnected. By not responding to the charges, Ms. Oldham has waived her right to a hearing, and staff requests that a Default Order be entered.

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 19 of 25 Commissioner Ludwig made a motion seconded by Commissioner Orr that a Default Order be filed to revoke Ms. Paula Oldham's Class III Certification to conduct gambling activities. *Vote taken; the motion passed unanimously.*

Michelle Oatis, Card Room Employee – Wizard's Casino, Burien:

Ms. Dennistoun, reported that Ms. Oatis admitted to her employer, Wizard's Casino, that she gave away pull-tabs to patrons without collecting payment. As a result Wizard's suffered a \$539.00 loss. Staff mailed the charges to Ms. Oatis through U.S. First Class mail. There was no response and staff did not receive the mail back marked undeliverable. Service was therefore deemed complete. Staff attempted to call Ms. Oatis; however, the number was not a correct number. By not responding to the charges, Ms. Oatis has waived her right to a hearing and staff therefore asks that a default be entered.

Commissioner Orr made a motion seconded by Commissioner Ludwig that a Default Order be filed to revoke Michelle Oatis' license to conduct gambling activities. *Vote taken*; the motion passed unanimously.

Randy Lizama, Card Room Employee - Luciano's Casino, Fife:

Ms. Dennistoun, reported that Mr. Lizama was allegedly involved in a bookmaking operation that occurred on the premises of Luciano's Casino where he was employed as a card room employee. Mr. Lizama currently has criminal charges pending, and the Director served him with the summary suspension. Ms. Lizama did not request a hearing, nor did he make a regular request for a judicative hearing. Staff attempted to contact Mr. Lizama; however, the phone number had been disconnected. By failing to respond to the charges Mr. Lizama has waived his right to a hearing and staff therefore requests a Default Order to be entered.

Commissioner Orr made a motion seconded by Commissioner Parker to enter a Default Order to revoke Randy Lizama's license to conduct gambling activities. *Vote taken; the motion passed unanimously.*

Teresa Wright, Card Room Employee, Freddie's Club Casino, Fife:

Ms. Dennistoun, reported that Ms. Wright allegedly stole between \$300 and \$3,150 in chips while dealing cards at Freddie's Club Casino in Fife. Freddie's terminated Ms. Wright's employment and the police arrested and charged Ms. Wright with third degree theft. Service of the charges was completed by U.S. First Class mail. Ms. Wright failed to respond. Staff attempted to contact Ms. Wright at the number provided; however, the number belonged to a local bank. By not responding to the charges Ms. Wright has waived her right to a hearing and staff therefore requests a Default Order be entered.

<u>Commissioner Ludwig</u> made a motion seconded by <u>Commissioner Orr</u> to enter a <u>Default</u> Order to revoke Teresa Wright's license to conduct gambling activities.

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Ronald Stewart, Card Room Employee, All Star Casino, Silverdale:

Ms. Dennistoun, reported that Mr. Stewart failed to fully disclose his criminal history although he did acknowledge on his transfer application that he had been charged with a crime. Mr. Stewart explained in writing that the charges had been dropped. In reality those charges were not dropped. Mr. Stewart was charged with a crime and is currently on probation until October 2004. Charges were sent via U.S. mail and were not returned to staff non-deliverable, service is therefore deemed complete. Staff attempted to call Mr. Stewart at the telephone number provided—the phone had been disconnected. By failing to respond to the charges, Mr. Stewart has waived his right to a hearing and staff requests that a Default Order be entered.

A motion was made and seconded to enter a Default Order to revoke Ronald Stewart's license to conduct gambling activities. *Vote taken; the motion passed unanimously.*

Chair McLaughlin called for a recess at 10:55 a.m. and reconvened the meeting at 11:10 a.m.

11. Relief from Adjusted Cash Flow Requirements for Bingo Operators:

Amy Blume, Administrator, reported this rule was filed after the November meeting and is up for final action. Staff has been looking at options for consideration when licensees are out of compliance, and staff is hoping that this process will be simpler than the prior process. The former petition and variance process no longer exists—however there was a strong desire to develop something that would give licensees relief. The rule before the Commission provides that if a licensee is out of compliance but within 25 percent of the cash flow requirements, they would automatically be granted a 25 percent reduction for that year. The licensee must be in compliance for four years before they can apply for relief again. Staff recommends final action, and that this rule be effective 31 days after filing. This would apply to the year 2003.

Chair McLaughlin called for public testimony.

Ronnie Strong, Bingo Manager of Andes Post #1 in Tacoma, thanked the Commissioners for looking at this relief package. She noted Pierce County has just been hit with the smoking ban and that it is really showing an impact. She emphasized the need for a relief package to give licensees something to fall back on when needed.

Rick Newgard, Washington State Gaming Association, reported that his association also strongly hoped the Commission would support the proposal.

Ernestine Farness, Seattle Jaycees Bingo, also thanked the Commission for taking the time to work out a relief package—she hoped that it would be passed today.

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 21 of 25 **Gary Murray,** President, Recreation Gaming Association, reported the RGA supported this move—anything that would help the charities do the things that they do in their community, to continue to put forth money for the charities that they support.

<u>Commissioner Parker</u> made a motion seconded by <u>Commissioner Orr</u> for the adoption of staff's recommendation, and that the rule be effective 31-days after filing. *Vote taken; the motion passed unanimously.*

12. Bingo Licensees Operating at Multiple Locations within a County:

WAC 230-04-192 and WAC 230-04-196:

Ms. Blume, Administrator, reported this rule would be up for final action next month. She explained that currently there is a restriction on how many locations a Bingo operator may have. <u>Item 12-A</u> calls for a repeal—which means that an organization could have more than one location within the county. <u>Item 12-B</u> is a repealer as well. The current rule allows the Commission to issue one license to small Bingo operators and allows them to operate at three different locations. If repealed, a Bingo organization operating at multiple locations would have to get a license for each of the locations. Staff sent letters of explanation to all of the Bingo licensees regarding this rule and its impacts. Staff recommends further discussion. **Chair McLaughlin** called for public testimony.

Julia Puckett, Boys and Girls Clubs in South Puget Sound, reported that her organization would be interested in the ability to have multiple licenses in Pierce County. She explained their long-range goal is to provide services in underserved areas, in rural areas where service to youth is limited and to areas that have limited resources to provide services. Ms. Puckett explained the rule has two benefits. One is the amount of dollars and revenues to support the programs; and secondly, the social activities for people in underserved areas. She said the organization has no intent to compete with other Bingo organizations—Bingo is strictly a fundraiser, and if they went into an area, they would first research what's there, and determine what the area could support. She emphasized the organization does their homework and decides whether or not the time, effort, and human resources is worth the return.

With no further comments, **Chair McLaughlin** affirmed the rule would be scheduled for continued discussion at the April 2004 meeting.

13. <u>Petition for Rule Change Submitted by DigiDeal Corporation:</u>

WAC 230-40-070:

Ms. Blume explained this is a petition for rule change dealing with electronic card facsimiles. This item was up for discussion and possible filing last month, and, the Commission must take some action at this meeting. The petitioner is Bob Tull, representing the DigiDeal Corporation. Ms. Blume recalled there was a petition by this same company a few years ago to allow electronic card facsimiles to be used in house-banked card games. They are now asking that be changed and that this activity be allowed for all authorized card

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 22 of 25 games. The only thing this petition does is delete the words "house-banked". The company has been working on developing a game called Trips 2 and Trips 3. Special Agent Keith Whitmer's correspondence to DigiDeal letting them know that the Commission cannot approve either of these games (right now) is included in the agenda packet. One reason is because of other rules dealing with betting limits—these games would exceed those betting limits. Secondly, the electronic card facsimiles are not currently allowed for nonhouse-banked games such as the Trips 2 and Trips 3 game.

Since last month, the Agency Rules Team has had a chance to review the petition and their memo was in the agenda packet. The memo explains some things that the Commissioners may want to consider. The firs, to some people this may be considered to be an expansion of gambling. The second consideration deals with regulatory concerns, and the Rules Team strongly recommended that if the Commissioners file this rule, staff would want to come back next month and make sure this activity would only be allowed at house-banked card rooms—because the requirements for everything from internal controls to surveillance are more stringent. **Ms. Blume** noted that if the petition was filed and later passed as a rule, that currently there isn't a game in existence—there is no product or game available, and, because of the betting restrictions.

Ms. Blume affirmed that DigiDeal had hoped to provide a demonstration at this meeting but knew that Commissioner Niemi would not be present—she is the only Commissioner who hasn't had the benefit of seeing the system. DigiDeal would be prepared to provide a demonstration next month. Ms. Blume noted that at this juncture, the Commission must take action on this rule at this meeting and has three options: file it, deny it, or propose an alternative.

Bob Tull, Attorney, representing DigiDeal, addressed the commission. He advised that when the question of electronic facsimile of cards came up, the staff said then, and their memo now says that one of the advantages of this type of technology is that it can reduce the human element in the dealing side of things. It can increase regulatory control and security. Yesterday, the Commission heard a case involving a dealer that may or may not have been possible to have that kind of track pattern if that particular person had been assisted by DigiDeal's type of technology. He explained this petition sets up a possibility for inventive people, such as DigiDeal to come up with ways of taking games and selling them to staff in terms of the regulatory controls and to fit within our state regulatory framework. One of the games is called Texas Hold-Em, and DigiDeal will provide a demonstration at the next meeting of a nearly completed system for that game to be played on the DigiDeal platform. DigiDeal will take the demonstration beyond having the Commission look at a table—they will also provide an accompanying PowerPoint presentation. It will describe the existing platform, which is the Black Jack platform, and then demonstrate how it gets adapted for other types of games. The Petitioner is still delving into the issue of whether they should or shouldn't be restricted to a house-banked licensee.

Mr. Tull acknowledged there are other things in existing Commission rules that gives the staff power to tailor requirements, and the Petitioner wanted to understand how that would

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 23 of 25 work. DigiDeal will interface with some of the other industry segments to see what they think and whether there could there be a circumstance in the future where it would be advantageous from a regulatory standpoint to allow it in a nonhouse-banked situation. He affirmed that DigiDeal is cognizant of the Commission's primary focus regarding their regulatory control. The presentation will highlight the old technology so that all the Commissioners will be refreshed as to what is available on the market, and then go through at least one demonstration of (Texas Hold-Em) how a nonhouse-banked game would also play. That will hopefully demonstrate how the regulatory concerns as identified by staff are controlled. Mr. Tull emphasized that the key thing this technology does is replicate cards, no one is playing against a machine, it is strictly an electronic facsimile of the cards. Mr. Tull noted the third meeting would be in Spokane, in May, and there would be an opportunity for interested Commissioners to visit DigiDeal's facility. Mr. Tull introduced Larry Martin, the officer and owner of DigiDeal, and Tara Schneider from their marketing department. Mr. Tull asked the Commission to file the rule because allowing authorized games to be replicated electronically would have more advantages than disadvantages.

Commissioner Ludwig advised his question may be a little premature, because the Commission was not being asked to approve any particular game at this time; however, he asked for verification that as far as the Petitioner believes now, or anticipates, any future game could be played without using the DigiDeal facsimile. Mr. Tull affirmed that if it couldn't be played with cards, then it was not going to be something that could be regulated. Any game submitted would have to be checked both ways. The issue regarding the Trips game was a betting rounds question, and the Petitioner is currently having to figure out if a game would have commercial appeal with that particular restriction, or, what situations would that restriction apply or not apply.

Commissioner Ludwig noted that based on that further clarification, he would move that the Commission file this rule for further discussion. Commissioner Orr seconded the motion. Chair McLaughlin called for public testimony.

Max Faulkner, Kegler's Inc., advised that he would like to give the Commission a perspective from an operator/player. In general, he believed the impact of the electronic facsimile of cards opportunity would be less of an impact on nonhouse-banked than on house-banked card room facilities. If anything, they would contribute to the integrity of the game because it wouldn't be possible to mark cards or to hold out cards. There were no further public comments.

Vote taken; the motion passed unanimously.

14. Promotions:

WAC 230-12-045:

Ms. Blume reported this is up for discussion and possible filing. The rule deals with promotions that licensees offer in conjunction with gambling activities. They are not promotional contests of chance. Promotional contests of chance are for any business whether or not they have an underlying gambling license. An example of a promotion that is

Washington State Gambling Commission Minutes March 11-12, 2004 Meeting Page 24 of 25 connected to a gambling activity would be a match play coupon that a player pulls out of a newspaper. She noted this particular rule has been difficult for both licensees and staff to interpret. It was originally part of the promotions package passed by the Commission in October of 2003. Staff pulled the rule back to give staff additional time to work on the rule. Ms. Blume emphasized that the changes are intended to make this rule clearer, they are not meant to change what's allowed. Staff recommends filing the rule for further discussion. Chair McLaughlin called for public testimony; there was none.

<u>Commissioner Orr</u> made a motion seconded by <u>Commissioner Ludwig</u> to file WAC 230-12-045 for further discussion. *Vote taken; the motion passed unanimously*.

15. Other Business/General Discussion/Comments from the Public:

Chair McLaughlin called for comments from the public.

Julia Puckett, Boys and Girls Club of South Puget Sound, thanked the Commissioners for their service to the citizens of Washington, and expressed her compliments to staff—she noted they are professional, courteous, knowledgeable, and always willing to help. Even when Special Agents make visits at licensee establishments to scrutinize the operations, they are very helpful and appear to sincerely have everybody's best interest at heart.

Gary Murray, President of the Recreation Gaming Association, extended a "thank-you" to Ed Fleisher for his years of service on the Commission – "his diligence in working with the RGA, being available to discuss issues, his thoughtful insights, and his knowledge—he's been a great asset to the Commission and the licensees. His work was much appreciated and he'll be missed."

Senator Winsley also wished Mr. Fleisher the best, and recognized his many years of service to the state. She commented that she thought Mr. Fleisher would do well in the future and she was certain that we will see more of him into the future, whether in the Legislature, or in a different role.

Mr. Fleisher acknowledged and appreciated the kind comments. He thanked the Commissioners, Commission staff, and all of the licensees—he commented that it has been a great six years, and he really enjoyed the challenging work at the Commission.

With no further business, **Chair McLaughlin** announced the next meeting will be held at the Phoenix Inn, located in Olympia, on April 8 and 9, 2004. She adjourned the meeting.

Minutes submitted by:

Shirley Corbett Executive Assistant

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